

a balance sheet and a statement of operations and retained earnings, a statement of cash flows, an analysis of the mortgagee's net worth adjusted to reflect only assets acceptable to the Secretary, and an analysis of escrow funds; and

(B) Such other financial information as the Secretary may require to determine the accuracy and validity of the audit report.

(ii) A mortgagee must submit a report on compliance tests prescribed by the Secretary.

(4) *Fidelity bond.* A Title II mortgagee shall have fidelity bond coverage and errors and omissions insurance acceptable to the Secretary and in an amount required by the Secretary, or alternative insurance coverage approved by the Secretary, that assures the faithful performance of the responsibilities of the mortgagee.

[62 FR 20082, Apr. 24, 1997, as amended at 62 FR 65182, Dec. 10, 1997; 63 FR 9742, Feb. 26, 1998; 63 FR 44361, Aug. 18, 1998; 67 FR 53451, Aug. 15, 2002; 77 FR 51468, Aug. 24, 2012]

§ 202.8 Sponsored third-party originators.

(a) *Definitions—Sponsor.* (1) With respect to Title I programs, a sponsor is a lender that holds a valid Title I Contract of Insurance and meets the net worth requirement for the class of lender to which it belongs.

(2) With respect to Title II programs, a sponsor is a mortgagee that holds a valid origination approval agreement, is approved to participate in the Direct Endorsement program, and meets the net worth requirement for the class of mortgagee to which it belongs.

(3) Each sponsor shall be responsible to the Secretary for the actions of its sponsored third-party originators or mortgagees in originating loans or mortgages, unless applicable law or regulation requires specific knowledge on the part of the party to be held responsible. If specific knowledge is required, the Secretary will presume that a sponsor has knowledge of the actions of its sponsored third-party originators or mortgagees in originating loans or mortgages and the sponsor is responsible for those actions unless it can rebut the presumption with affirmative evidence.

Sponsored third-party originator. A sponsored third-party originator may hold a Title I Contract of Insurance or Title II Origination Approval Agreement if it is an FHA-approved lender or mortgagee. If the sponsored third-party originator is not an FHA-approved lender or mortgagee, then the sponsored third-party originator may not hold a Title I Contract of Insurance or Title II Origination Approval Agreement. A sponsored third-party originator is authorized to originate Title I direct loans or Title II mortgage loans for sale or transfer to a sponsor or sponsors, as defined in this section, that holds a valid Title I Contract of Insurance or Title II Origination Approval Agreement and is not under suspension, subject to the sponsor determining that the third-party originator has met the eligibility criteria of paragraph (b) of this section.

(b) *Eligibility to originate loans to be insured by FHA.* A sponsored third-party originator may originate loans to be insured by FHA, provided that:

(1) The sponsored third-party originator is working with and through an FHA-approved lender or mortgagee; and

(2) The sponsored third-party originator or an officer, partner, director, principal, manager, supervisor, loan processor, or loan originator of the sponsored third-party originator has not been subject to the sanctions or administrative actions listed in § 202.5(j), as determined and verified by the FHA-approved lender or mortgagee.

[75 FR 20734, Apr. 20, 2010, as amended at 77 FR 51468, Aug. 24, 2012]

§ 202.9 Investing lenders and mortgagees.

(a) *Definition.* An investing lender or mortgagee is an organization that is not approved under any other section of this part. An investing lender or mortgagee may purchase, hold or sell Title I loans or Title II mortgages, respectively, but may not originate Title I loans or Title II mortgages in its own name or submit applications for the insurance of mortgages. An investing lender or mortgagee may not service Title I loans or Title II mortgages without prior approval of the Secretary.

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(b) *Additional requirements.* In addition to the general approval requirements in § 202.5, an investing lender or mortgagee shall meet the following requirements:

(1) *Funding arrangements.* An investing lender or mortgagee shall have, or have made arrangements for, funds sufficient to support a projected investment of at least \$1,000,000 in property improvement, manufactured home or real estate loans or mortgages.

(2) *Officers and staff.* In lieu of the staffing and facilities requirements in § 202.5(b), an investing lender or mortgagee shall have officers or employees who are capable of managing its activities in purchasing, holding, and selling Title I loans or Title II mortgages.

(3) *Fidelity bond.* An investing mortgagee shall maintain fidelity bond coverage and errors and omissions insurance acceptable to the Secretary and in an amount required by the Secretary, or alternative insurance coverage approved by the Secretary, that assures the faithful performance of the responsibilities of the mortgagee.

[62 FR 20082, Apr. 24, 1997, as amended at 63 FR 9742, Feb. 26, 1998; 75 FR 20734, Apr. 20, 2010]

§ 202.10 Governmental institutions, Government-sponsored enterprises, public housing agencies and State housing agencies.

(a) *Definition.* A Federal, State or municipal governmental agency, a Federal Reserve Bank, a Federal Home Loan Bank, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association may be an approved lender or mortgagee. A mortgagee approved under this section may submit applications for Title II mortgage insurance. A lender or mortgagee approved under this section may originate, purchase, service or sell Title I loans and insured mortgages, respectively. A mortgagee or lender approved under this section is not required to meet a net worth requirement. A mortgagee shall maintain fidelity bond coverage and errors and omissions insurance acceptable to the Secretary and in an amount required by the Secretary, or alternative insurance coverage approved by the Secretary, that assures the faithful per-

formance of the responsibilities of the mortgagee. There are no additional requirements beyond the general approval requirements in § 202.5 or as provided under paragraph (b) of this section.

(b) *Public housing agencies and State housing agencies.* Under such terms and conditions as the Secretary may prescribe and notwithstanding the general requirements of § 202.5 or the requirements of paragraph (a) of this section, a public housing agency or its instrumentality or a State housing agency may be approved as a mortgagee for the purpose of originating and holding multifamily mortgages funded by issuance of tax exempt obligations by the agency.

(c) *Audit requirements.* The insuring of loans and mortgages under the Act constitutes “financial assistance” for purposes of audit requirements set out in part 44 of this title. State and local governments (as defined in 24 CFR 44.2) that receive insurance as lenders and mortgagees shall conduct audits in accordance with HUD audit requirements at part 44 of this title.

Subpart C—Title I and Title II Specific Requirements

§ 202.11 Title I.

(a) *Types of administrative action.* In addition to termination of the Contract of Insurance, certain sanctions may be imposed under the Title I program. The administrative actions that may be applied are set forth in 24 CFR part 25. Civil money penalties may be imposed against Title I lenders and mortgagees pursuant to 24 CFR part 30.

(b) *Grounds for action.* Administrative actions shall be based upon both the grounds set forth in 24 CFR part 25 and as follows:

(1) Failure to properly supervise and monitor dealers under the provisions of part 201 of this title;

(2) Exhaustion of the general insurance reserve established under part 201 of this title;

(3) Maintenance of a Title I claims/loan ratio representing an unacceptable risk to the Department; or